

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION  
No. 4:17-CR-45-BR  
No. 4:18-CV-154-BR

This matter is before the court on the 29 May 2019 memorandum and recommendation of U.S. Magistrate Judge Robert B. Jones, Jr. (“M&R”), (DE # 71), and defendant’s objection thereto, (DE # 72).

In the M&R, Judge Jones recommends dismissal of petitioner’s 28 U.S.C. § 2255 claim for ineffective assistance of counsel based on trial counsel’s failure to abide by petitioner’s request to file a notice of appeal.<sup>1</sup> (DE # 71, at 1, 13.) In his objection to that recommendation, petitioner relies on newly discovered disciplinary actions that the North Carolina State Bar has taken against trial counsel and represents that the government does not object to his request that his appellate rights be reinstated. (DE # 72, at 3.) The government has not filed a response to petitioner’s objection, and the time within which to do so has expired.

Because the government apparently agrees that petitioner is entitled to relief on his remaining § 2255 claim, the M&R is MOOT. Petitioner’s § 2255 motion, (DE # 48), is ALLOWED as to his ineffective assistance of counsel claim based on counsel’s failure to file an appeal as directed. The Clerk is DIRECTED to vacate the judgment entered 4 May 2018 and to re-enter that judgment to allow the filing of a timely notice of appeal. The Clerk is also

<sup>1</sup> The court has previously dismissed petitioner's other § 2255 claims. (DE # 58.)

DIRECTED to file a notice of appeal on petitioner's behalf.

This 2 July 2019.



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W. Earl Britt  
Senior U.S. District Judge